Supreme Court, U. S.
FILED
AUG 23 1976
MICHAEL RODAK, JR., CLE

IN THE
UNITED STATES SUPREME COURT

OCTOBER TERM, 1975

No. 76-270

DAVID C. HAKIM,
Petitioner

v.

COMMISSIONER OF INTERNAL
REVENUE SERVICE,
Respondent

PETITION FOR IMMEDIATE GRANTING OF CERTIORARI AND MISCELLANEOUS MOTIONS

Service to be made upon:
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PETITION FOR IMMEDIATE GRANTING OF CERTIORARI AND MISCELLANEOUS MOTIONS

The petitioner requests certiorari before final judgment in this cause as permitted by 28 U.S.C. sections 1254(1), 2101(e) and sets forth the following in support of such request:

1) That this suit in equity for the convening of a Three Judge District Court under 28 U.S.C. 2282, 2284, to enjoin Internal Revenue Code provisions consisting of the investment tax credit, the percentage depletion deduction, the domestic international sales corporation's deferral of income, the stepped up basis (to its fair market value at the date of death or alternate valuation date) of property acquired from a decedent, and the capital gains exclusion of income, on the grounds that

such tax preferences[1] are arbitrary exercises of the taxing power and are, therefore, unconstitutional under the Fifth Amendment Due Process Clause and the Article I, Section 8 [1] General Welfare Limitation, was filed in early 1975 in the United States District Court for the Eastern District of Michigan, No. 5-70334. The alleged loss to the government and consequently to the people of the United States due to such preferences wherein the wealthy can avoid paying their fair share of taxes, consequently creating a condition of involuntary servitude upon this petitioner (plaintiff) and others similarly situated, was estimated to be twenty-six billion dollars ($26,000,000,000.00) yearly;[2]

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[1] The tax preferences that are alleged in the plaintiff's complaint and analyzed by his brief and reply brief for the Court of Appeals are briefly explained on pages 3 - 5 of the complaint and are summarized below:

Preference	Sections of the I.R.C. that Should Be Enjoined	Approximate Yearly Loss in Billions of Dollars
Investment of tax credit	46	4.2
Percentage depletion (of natural resources)	611, 613, 613A	2.5
DISC (Domestic International Sales Corporations deferral of income)	911, 995	1.1
Stepped up basis of property acquired from a decedent	1014	15.
Capital Gains exclusion	1201, 1202	3.1

[2] The irreparable injury allegations on pages 2 - 3 of his complaint were stated to be that this plaintiff, being a member of the middle class, is subject to the duty of paying more than his fair share of taxes because he does not benefit from such preferences; that his taxes would be approximately one thousand dollars less per year if the alleged discriminatory provisions were eliminated and the progressive rate structure adjusted accordingly to yield the same amount of revenue currently obtained. He also alleged that he believes such tax preferences to be a violation of the mores of his nation as embodied in his Federal Constitution (or to be a violation of public policy). Therefore, a further argument against the validity of the alleged unconstitutional tax preferences implicitly contained in the plaintiff's complaint is that they are per se discriminatory, that they inherently violate public policy whether or not the taxpayer benefiting from them is a member of the wealthy class.

2) That on October 21, 1975, United States District Judge Thomas P. Thornton denied this petitioner's motion for a Three Judge District Court and dismissed the action upon hearing of the defendant's motion to dismiss, stating in his order that this plaintiff did not allege a substantial constitutional issue;

3) That an amended notice of appeal to the United States Court of Appeals for the Sixth Circuit, No. 76-1009, was filed timely under 28 U.S.C. section 1291 on November 24, 1975, with the cause docketed shortly thereafter and with all required briefs filed before April, 1976;

4) That on or about June 1, 1976, this petitioner filed an amended motion for temporary and permanent injunctions and expedited hearing[3] by the Court of Appeals, which motion was denied on June 24, 1976;

5) That to this date the hearing on the merits of this cause by the Court of Appeals has not been scheduled.

Wherefore, assuming the truth of this plaintiff's allegation that the above named preferences are unconstitutional exercises of the taxing power, there is consequently a daily loss of approximately seventy million dollars ($70,000,000.00). Now then this petitioner (plaintiff) requests the United States Supreme Court to assume immediate jurisdiction because of the exceptional importance of this action, to determine that this plaintiff raised a substantial issue by his pleadings, and:

1) To issue a temporary injunction, and/or to grant and to expedite the hearing and afterwards to issue a permanent injunction to restrain the operation of the aforementioned tax preferences, or[4]

[3] The earlier motion was a request for the Court of Appeals to hear this case en banc, which was denied on April 27. 1976.

[4] This plaintiff believes that the Supreme Court has jurisdiction to act as it desires in this cause under 28 U.S.C. 2106. (For example, it has discretion as to the effective date of any injunction.) However, if the Court wishes to remand this cause to the Court of

2) To remand this cause to the United States District Court for the Eastern District of Michigan for the immediate convening of a Three Judge District Court under 28 U.S.C. sections 2282, 2284, or to the United States Court of Appeals for the Sixth Circuit under 28 U.S.C. section 1291 for the immediate convening of its usual Three Judge Court.

David C. Hakim

DAVID C. HAKIM,
Petitioner in pro se

Appeals or the United States District Court for the Eastern District of Michigan, it is requested that the Court issue the requested temporary injunction first.

CERTIFICATE OF SERVICE OF PETITION AND MOTIONS HAKIM *v.* COMMISSIONER OF INTERNAL REVENUE SERVICE

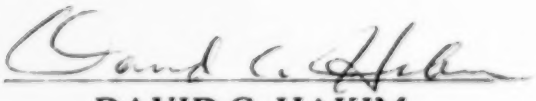
It is hereby certified that one copy each of the PETITION FOR IMMEDIATE GRANTING OF CERTIORARI AND MISCELLANEOUS MOTIONS was served by mailing in the United States Mail, with postage prepaid, on August 20, 1976, to:

Solicitor General
Department of Justice
Washington, D.C. 20530

Stephen M. Gelber, Esq.
Appellate Section
U.S. Department of Justice
Main Building - Room 4320
Washington, D. C. 20530

Commissioner of Internal Revenue
Internal Revenue Service
Department of the Treasury
Washington, D. C. 20224

All parties required to be served have been served.



DAVID C. HAKIM,
Plaintiff

Supreme Court, U. S.
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No. 76-270

In the Supreme Court of the United States

OCTOBER TERM, 1976

DAVID C. HAKIM, PETITIONER

v.

COMMISSIONER OF INTERNAL REVENUE

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE SIXTH CIRCUIT

MEMORANDUM FOR THE RESPONDENT IN OPPOSITION

ROBERT H. BORK,
Solicitor General,
Department of Justice,
Washington, D.C. 20530.

In the Supreme Court of the United States

OCTOBER TERM, 1976

No. 76-270

DAVID C. HAKIM, PETITIONER

v.

COMMISSIONER OF INTERNAL REVENUE

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE SIXTH CIRCUIT

MEMORANDUM FOR THE RESPONDENT IN OPPOSITION

Petitioner seeks certiorari prior to judgment by the court of appeals. He brought this suit in the United States District Court for the Eastern District of Michigan to enjoin the operation, as to other taxpayers, of several provisions of the Internal Revenue Code. Petitioner contends that these sections of the Code discriminate against lower and middle income taxpayers by according preferential tax treatment to "wealthy individuals and corporations" (Complaint, p. 2).[1]

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[1]The provisions of the Internal Revenue Code of 1954 (26 U.S.C. (and Supp. V)) petitioner challenged are: Section 46 (investment credit for specified types of business property); Sections 611 and 613 (depletion allowance for mines, oil and gas wells, other natural deposits and timber); Section 995 (special tax treatment for "domestic international sales corporations"); Section 1014 (basis of property acquired from a decedent); and Sections 1201 and 1202 (capital gains).

The district court refused to convene a three-judge court and dismissed petitioner's complaint on the grounds that he lacked standing to bring such a lawsuit and that he did not raise any substantial constitutional claim warranting consideration by such a court under 28 U.S.C. 2282. Petitioner's appeal is currently pending in the court of appeals (Pet. 3).

1. The questions presented—whether petitioner has standing to maintain this lawsuit and whether he has raised a substantial constitutional question requiring consideration by a three-judge district court—are not of such "imperative public importance" (Rule 20) as to warrant by-passing normal court of appeals review. This case has been fully briefed in the court of appeals, and that is the "regular court" in which these matters should "properly * * * be adjudicated * * * in the first instance." *Aaron* v. *Cooper*, 357 U.S. 566, 567.[2]

2. At all events, the district court correctly refused to convene a three-judge court because petitioner lacks standing and has not raised any "substantial" constitutional question. See *Ex parte Poresky*, 290 U.S. 30, 31-32; *Idlewild Liquor Corp.* v. *Epstein*, 370 U.S. 713, 715; *Swift & Co.* v. *Wickham*, 382 U.S. 111, 115.

a. Petitioner has no standing to maintain this lawsuit. As the Court recently observed in *Simon* v. *Eastern Kentucky Welfare Rights Organization*, No. 74-1124, decided June 1, 1976 (slip op. 11), "the relevant inquiry

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[2]A direct appeal to this Court is allowed under 28 U.S.C. 1253 from the judgment of a three-judge court empaneled under 28 U.S.C. 2282. But where the district court declines to convene such a court, it is the function of the court of appeals to review that determination. *Schackman* v. *Arnebergh*, 387 U.S. 427; *Wilson* v. *City of Port Lavaca*, 391 U.S. 352; *Mengelkock* v. *Industrial Welfare Commission*, 393 U.S. 83.

is whether * * * the plaintiff has shown an injury to himself that is likely to be redressed by a favorable decision. Absent such a showing, exercise of its power by a federal court would be gratuitous and thus inconsistent with the Art. III limitation."

Here, petitioner will not suffer the "kind of direct injury required for standing" (*United States* v. *Richardson*, 418 U.S. 166, 172) because he has no " 'personal stake in the outcome' " (*Simon* v. *Eastern Kentucky Welfare Rights Organization* (slip op. 11)) of the abstract issues he seeks to litigate. Petitioner challenges the constitutionality of various provisions of the Internal Revenue Code solely in his asserted capacity as a "member of the middle class" (Pet. 2, n. 2) on the theory that these provisions grant preferential tax treatment to more affluent taxpayers to the theoretical detriment of the middle class. But there is no immediate connection between one taxpayer's present or potential tax liability and the tax treatment accorded to others. As this Court held more than 50 years ago in *Frothingham* v. *Mellon*, 262 U.S. 447, 486-489, and reaffirmed in *United States* v. *Richardson*, *supra*, 418 U.S. at 171-180, a plaintiff cannot use his status as a taxpayer as a basis for requiring a federal court to hear what are essentially his " 'generalized grievances about the conduct of government.' " *Id.* at 173, quoting from *Flast* v. *Cohen*, 392 U.S. 83, 106.

b. With respect to the merits of petitioner's claims, he appears to argue that the Constitution compels the progressive rate structure of the federal income tax. Thus, he challenges the provisions in question (see n. 1, *supra*) on the theory that wealthy individuals must, as a constitutional matter, pay progressively greater taxes than others, so that any tax preference available to reduce their total tax liability is unconstitutional.

This Court, however, has always regarded the progressive rate structure of the tax statutes as a matter for determination by the legislature, which has substantial latitude in making reasonable distinctions between differently situated taxpayers. See *Knowlton* v. *Moore*, 178 U.S. 41, 109; *Brushaber* v. *Union Pac. R.R.*, 240 U.S. 1, 24-25; *Barclay & Co.* v. *Edwards*, 267 U.S. 442, 450-451; *Steward Machine Co.* v. *Davis*, 301 U.S. 548, 583-585. Thus, "legislative classification[s]" such as those in the tax law "will not be set aside if any state of facts rationally justifying * * * [them] is demonstrated to or perceived by the courts." *United States* v. *Maryland Savings-Share Ins. Corp.*, 400 U.S. 4, 6. There is no constitutional violation when Congress exercises its legislative judgment to "tax different types of taxpayers differently." See *Puget Sound Co.* v. *Seattle*, 291 U.S. 619, 624, 625; *Steward Machine Co.* v. *Davis, supra*, 301 U.S. at 584-585.

It is respectfully submitted that the petition for a writ of certiorari should be denied.

ROBERT H. BORK,
Solicitor General.

OCTOBER 1976.

DOJ-1976-10